

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
	§	CRIMINAL NO. 4:02CR48
v.	§	
	§	
JOSHUA JAMES COCHRAN	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 7, 2009 to determine whether the Defendant violated his supervised release. The Defendant was represented by Frank Henderson. The Government was represented by Miriam Rea.

On November 26, 2002, the Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to 64 months imprisonment followed by a 3-year term of supervised release for the offense of conspiracy with intent to manufacture, distribute, possess, or dispense 3,4-methylenedioxymethamphetamine ("ecstasy") and marijuana. This case was re-assigned to the Honorable Michael H. Schneider on August 20, 2007. Defendant began his term of supervision on September 21, 2007.

On August 27, 2009, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 157). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall not illegally possess a controlled substance; (3) Defendant shall refrain from any

unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; (4) Defendant shall refrain from excessive use alcohol and shall not purchase, possess, use distribute or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; and (5) Defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision, a subsequent condition imposed April 14, 2009.

The petition alleges that Defendant committed the following violations: (1) on February 25, 2009, in Denton County, Texas, Defendant was arrested for Driving While Intoxicated, in violation of Texas Penal Code § 49.04(a), a Class B misdemeanor, punishable by up to 180 days imprisonment and the case is currently pending in Denton County; (2) on July 16, 2009, in McLennan County, Texas, was arrested for Driving While Intoxicated by officers of the Robinson Police Department, in violation of Texas Penal Code § 49.04(a), a Class B misdemeanor, punishable by up to 180 days imprisonment, and the case is currently pending in McLennan County Court; (3) on July 16, 2009, in McLennan County, Texas, Defendant was arrested for Driving While License Suspended by officers of the Robinson Police Department in violation of Texas Transportation Code § 521.457, a Class B misdemeanor, and the case is currently pending in McLennan County; and (4) on January 12, 2009, Defendant submitted a urine specimen to Genesis Counseling Associates, P.C., Dallas, Texas, that tested positive for marijuana, and on February 26, 2009, Defendant admitted verbally and in writing to U.S. Probation Officer Oscar Salinas that he used marijuana with friends on or about January 10, 2009.

At the hearing, the Government withdrew its allegations regarding Defendant's arrests, the factual allegations underlying which are set forth in sections (1), (2), and (3) above. In light of this withdrawal, Defendant entered a plea of true to the remaining allegations regarding Defendant's alleged illegal possession of a controlled substance as set forth in section (4). The Court finds Defendant violated the term of his supervised release requiring him to not illegally possess a controlled substance. The Court further finds that Defendant's supervised release should be revoked. Defendant has waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Having heard the arguments of counsel, the Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of ten (10) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prison facilities located in Seagoville, Texas or Fort Worth, Texas, as appropriate.

SIGNED this 8th day of October, 2009.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE